

IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE G.BHAVANI PRASAD

WRIT PETITION NO :15882 of 2006

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Dated: 1st August 2006.

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Between:

M/s Sri Saradhi Enterprises, Bhimavaram

..... PETITIONER

AND

The Appellate Deputy Commissioner of Commercial
Taxes, Vijayawada, Krishna District and another

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD

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W.P.NO.15882 OF 2006

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

The petitioner is a proprietary concern and an assessee on the rolls of the 2nd respondent herein, which is a "dealer" in the meaning of the said expression under the A.P.G.S.T. Act, carrying on business in distribution and sale of soft drinks.

For the assessment year 2001-02, the 2nd respondent assessed the petitioner's tax liability, under the abovementioned act, by his proceedings dated 18-01-2005. The goods are taxable as falling under Entry-21 of the Sixth Schedule to the A.P.G.S.T. Act. It is the case of the petitioner that while making the assessment the assessing authority took its gross turnover into consideration for determining the tax liability, whereas according to the petitioner the assessing authority is required to take only that much of the turnover excluding the tax. The petitioner, therefore, made an application before the assessing authority, purporting to be one, under Rule 50 of the A.P.G.S.T. Rules. The said application was rejected by an "endorsement" dated 31-01-2006 of the 2nd respondent. The relevant portion of the said endorsement reads as follows:

" The request of the dealers is
examined and they are hereby

informed that revision of assessment under Rule 50 arises only in cases of arithmetical mistakes apparent from record and this is not a case falling under this category because in this case the assessment was finalized duly accepting the turnovers furnished in the statements certified by the Chartered Accountant.

Consequently, the request of the dealers is rejected and they are directed to pay the balance immediately.”

Aggrieved by the same, the petitioner carried the matter in appeal before the 1st respondent and the 1st respondent by his proceedings dated 24-01-2006, held that no appeal under Section 19 of the A.P.G.S.T. Act, would lie against the endorsement like the one in question before us. The relevant portion of the same reads as follows:

“ As per section 19 of the APGST Act there is no provision to file an appeal petition against an endorsement and hence the appeal petition is rejected from Admission.”

Hence, the present writ petition.

Heard the learned counsel for the petitioner and the learned Special Government Pleader for Taxes.

Whether the application made by the petitioner invoking Rule 50 of the Rules made under A.P.G.S.T.

Act, is maintainable are not depends upon the facts and circumstances of the case and we are not concerned with the maintainability or correctness of the claim made in the said application in the present writ petition. The question before us is whether the rejection of such an application is either an order or proceeding and whether the same is appealable under Section 19 of the Act. Section 19 of the A.P.G.S.T. Act reads as follows:

“19. Appeals: (1) Any dealer objecting to any order passed or proceeding recorded by any authority under the provisions of this Act (other than an order passed or proceeding recorded by (an Additional Commissioner, Joint Commissioner), Deputy Commissioner under (sub-section (4-C) of Section 14) may within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed.”

In substance, Section 19 of the Act provides an appeal against any order or proceeding recorded by any authority under the provisions of the Act, except those specifically excluded in the Section. The expressions either “order” or “proceeding” are not defined under the Act, but it is settled law that an order is a decision taken by some authority thereby effecting the rights and obligations of the Subjects of the State. Viewed at it from this angle, the decision of the 2nd respondent to reject the

application of the petitioner herein, in our view, certainly, would be an order as by the said endorsement the right of the petitioner for the determination of an accurate amount of tax payable by him in accordance with law, is affected; in the sense; the 2nd respondent rejected to examine the claim of the petitioner that it was wrongly taxed at a higher amount than what is legally due from. The fact that the 2nd respondent chose to describe his decision as an endorsement, in our view, does not make any difference for its appealability. It is the quality and character of the decision that determine the appealability of the order, but not the nomenclature given to it.

In substance, the 1st respondent, in our view, has clearly erred in coming to the conclusion that the appeal filed by the petitioner is not maintainable.

For the foregoing discussion, the writ petition is allowed directing the 1st respondent to consider the appeal of the petitioner on merits.

J.Chelameswar, J

G.Bhavani Prasad, J

1st August 2006
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